

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

8 CHRISTOPHER W. CONNORS,

Petitioner,

3:07-cv-00268-JCM-VPC

10 | VS.

## ORDER

11 BRIAN E. WILLIAMS, SR., *et al.*, <sup>1</sup>

## Respondents.

15 || Introduction

16        This habeas corpus action is before the court on the merits of the three claims in the third  
17 amended petition of Christopher W. Connors, a Nevada prisoner. The court denies Connors' third  
18 amended habeas petition, grants Connors a certificate of appealability, and directs the clerk of the  
19 court to enter an amended judgment.

## 20 | Procedural History and Factual Background

In its May 1, 1996, order on Connors' direct appeal, the Nevada Supreme Court succinctly described the background of the case as follows:

<sup>1</sup> E. K. McDaniel is no longer the warden of Ely State Prison. Furthermore, the petitioner, Christopher W. Connors, is now incarcerated at Nevada's Southern Desert Correctional Center (SDCC). The warden of SDCC is Brian E. Williams, Sr. Therefore, pursuant to Federal Rule of Civil Procedure 25(d), Brian E. Williams, Sr., is substituted for E. K. McDaniel as the respondent warden. The court will direct the clerk of the court to update the docket for this case in this regard.

On December 14, 1990, Tim and Chris Connors borrowed a .357 caliber revolver from James Fetting and drove Kelly Vandlandingham to a remote location outside of Las Vegas, Nevada. Tim shot Vandlandingham nine times (seven times in the head, and once in each arm), then took Vandlandingham's gun, money, and most of his drugs. Prior to the shooting, Chris had told Katrina Giancontieri that he and Tim were going to attack Vandlandingham, and offered her marijuana in exchange for an alibi. After the shooting, Chris and Tim returned the gun to Fetting. Tim told Fetting that he killed Vandlandingham.

The next day, after Fetting informed the police of Tim's confession, the police arrested Chris and Tim. Chris and Tim were charged with one count of murder with the use of a deadly weapon.

After a month-long trial, the jury found Tim and Chris guilty of both charges. The jury sentenced Chris to life with the possibility of parole for the murder, and a consecutive fifteen year term for the robbery with the use of a deadly weapon.

<sup>2</sup> Order Dismissing Appeal, Exhibit 147, pp. 1-2. The Nevada Supreme Court dismissed the appeal on May 1, 1996. *Id.* at 4.

13 On May 7, 1997, Connors filed a *pro se* post-conviction petition for writ of habeas corpus in  
14 state court. *See Petition for Writ of Habeas Corpus*, Exhibit 150. The state district court entered an  
15 order denying Connors habeas corpus relief on December 14, 2006. *Findings of Fact, Conclusions*  
16 *of Law and Order*, Exhibit 166. Connors appealed, and the Nevada Supreme Court affirmed on  
17 April 6, 2007. *Order of Affirmance*, Exhibit 173.

18 Connors initiated this federal habeas corpus action by mailing a *pro se* petition for writ of  
19 habeas corpus (ECF No. 1) to this court on May 8, 2007. Connors filed a first amended habeas  
20 petition on July 5, 2007 (ECF No. 6). The court then appointed counsel to represent Connors  
21 (ECF No. 10), and, with counsel, Connors filed a second amended habeas petition (ECF No. 20) on  
22 January 5, 2009.

<sup>26</sup> Unless otherwise specified, the exhibits referred to in this order are those filed by Connors and found in the record at ECF Nos. 21, 22, 23, 24, 25, 26, 45, and 48.

1           On May 19, 2010, this court denied Connors' second amended petition in its entirety, and  
 2 denied Connors a certificate of appealability. *See Order entered May 19, 2010 (ECF No. 37).*  
 3 Judgment was entered the same day (ECF No. 38).

4           Connors appealed. The court of appeals initially denied Connors' request for a certificate of  
 5 appealability (ECF No. 42), but apparently reconsidered and granted Connors a certificate of  
 6 appealability with respect to Ground 1 of his second amended petition, a claim that his trial counsel  
 7 was ineffective for failing to object to a jury instruction regarding the elements of first degree  
 8 murder. *See Second Amended Petition (ECF No. 20), pp. 6-8; see also Motion for Leave to Amend*  
 9 (ECF No. 44), p. 2 ("The Ninth Circuit initially denied the application, but later reconsidered its  
 10 decision, and granted a certificate of appealability on one issue, presented as Ground One in the  
 11 Second Amended Petition: 'whether appellant's trial counsel rendered ineffective assistance by  
 12 failing to object to a jury instruction that unconstitutionally blurred the distinction between first and  
 13 second degree murder.'"); Answer (ECF No. 63), p. 7.

14           On August 15, 2012, Connors filed, in this court, a motion for leave of court to amend his  
 15 petition. *See Motion for Leave to Amend Petition (ECF No. 44).* In that motion, Connors requested  
 16 a ruling by this court: "that it would grant, or at least entertain, a Motion to Amend the Second  
 17 Amended Petition to reincorporate claims that (a) the premeditation jury instruction presented at  
 18 Connors' trial was unconstitutional because it did [not] apprise the jury of the statutory elements of  
 19 first-degree murder, as per *Polk v. Sandoval*, 503 F.3d 903 (9th Cir.2007) and *Chambers v.*  
 20 *McDaniel*, 549 F.3d 1191 (9th Cir. 2008), and that (b) Connors' appellate counsel was ineffective for  
 21 not challenging this instruction on direct appeal." *Id.* at 12. On January 23, 2013, this court ruled:  
 22 "should the Ninth Circuit Court of Appeals remand this matter pursuant to Fed.R.App.P. 12.1, the  
 23 petitioner's motion to amend the petition (ECF No. 44) would be granted." Order entered January  
 24 23, 2013 (ECF No. 49), p. 5. Respondents filed a motion for reconsideration (ECF No. 50). On May  
 25 2, 2013, the court of appeals remanded the action to this court for consideration of Connors' motion  
 26 for leave to amend. *See Order of Court of Appeals filed May 2, 2013 (ECF No. 52).* On May 8,

1 2013, Connors filed a further motion to amend (ECF No. 53). On July 5, 2013, this court granted  
 2 Connors' motions to amend, and denied respondents' motion for reconsideration. *See Order entered*  
 3 *July 5, 2013 (ECF No. 54).*

4 On July 19, 2013, Connors filed his third amended petition for writ of habeas corpus  
 5 (ECF No. 58), setting forth, as Ground 3 of the third amended petition, what was Ground 1 of his  
 6 second amended petition, and adding, as Grounds 1 and 2 of the third amended petition, the two  
 7 new related claims. Respondents filed an answer, responding to the three claims in the third  
 8 amended petition, on October 1, 2013 (ECF No. 63). Connors filed a reply on December 2, 2013  
 9 (ECF No. 67).

10 Standard of Review

11 Because this action was initiated after April 24, 1996, the amendments to 28 U.S.C. § 2254  
 12 enacted as part of the Antiterrorism and Effective Death Penalty Act (AEDPA) apply. *See Lindh v.*  
*Murphy*, 521 U.S. 320, 336 (1997); *Van Tran v. Lindsey*, 212 F.3d 1143, 1148 (9th Cir.2000),  
 14 overruled on other grounds by *Lockyer v. Andrade*, 538 U.S. 63 (2003). 28 U.S.C. § 2254(d) sets  
 15 forth the primary standard of review under AEDPA:

16 An application for a writ of habeas corpus on behalf of a person in custody  
 17 pursuant to the judgment of a State court shall not be granted with respect to any  
 18 claim that was adjudicated on the merits in State court proceedings unless the  
 adjudication of the claim --

19 (1) resulted in a decision that was contrary to, or involved an unreasonable  
 20 application of, clearly established Federal law, as determined by the Supreme Court  
 of the United States; or

21 (2) resulted in a decision that was based on an unreasonable determination of  
 the facts in light of the evidence presented in the State court proceeding.

22 28 U.S.C. § 2254(d).

23 A state court decision is contrary to clearly established Supreme Court precedent, within the  
 24 meaning of 28 U.S.C. § 2254, "if the state court applies a rule that contradicts the governing law set  
 25 forth in [the Supreme Court's] cases" or "if the state court confronts a set of facts that are materially  
 26 indistinguishable from a decision of [the Supreme Court] and nevertheless arrives at a result

1 different from [the Supreme Court's] precedent." *Lockyer v. Andrade*, 538 U.S. 63, 73 (2003)  
 2 (quoting *Williams v. Taylor*, 529 U.S. 362, 405-06 (2000), and citing *Bell v. Cone*, 535 U.S. 685, 694  
 3 (2002)).

4 A state court decision is an unreasonable application of clearly established Supreme Court  
 5 precedent, within the meaning of 28 U.S.C. § 2254(d), "if the state court identifies the correct  
 6 governing legal principle from [the Supreme Court's] decisions but unreasonably applies that  
 7 principle to the facts of the prisoner's case." *Lockyer*, 538 U.S. at 75 (quoting *Williams*, 529 U.S.  
 8 at 413). The "unreasonable application" clause requires the state court decision to be more than  
 9 incorrect or erroneous; the state court's application of clearly established law must be objectively  
 10 unreasonable. *Id.* (quoting *Williams*, 529 U.S. at 409).

11 The Supreme Court has further instructed that "[a] state court's determination that a claim  
 12 lacks merit precludes federal habeas relief so long as 'fairminded jurists could disagree' on the  
 13 correctness of the state court's decision." *Harrington v. Richter*, 562 U.S. 86, 131 S.Ct. 770, 786  
 14 (2011) (citing *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)). The Supreme Court has stated  
 15 "that even a strong case for relief does not mean the state court's contrary conclusion was  
 16 unreasonable." *Id.* (citing *Lockyer*, 538 U.S. at 75); *see also Cullen v. Pinholster*, \_\_ U.S. \_\_, 131  
 17 S.Ct. 1388, 1398 (2011) (describing the AEDPA standard as "a difficult to meet and highly  
 18 deferential standard for evaluating state-court rulings, which demands that state-court decisions be  
 19 given the benefit of the doubt" (internal quotation marks and citations omitted)).

20 The state court's "last reasoned decision" is the ruling subject to section 2254(d) review.  
 21 *Cheney v. Washington*, 614 F.3d 987, 995 (9th Cir. 2010). If the last reasoned state-court decision  
 22 adopts or substantially incorporates the reasoning from a previous state-court decision, a federal  
 23 habeas court may consider both decisions to ascertain the state court's reasoning. *See Edwards v.*  
 24 *Lamarque*, 475 F.3d 1121, 1126 (9th Cir. 2007) (en banc).

25  
 26

1     Analysis

2         Ground 1

3             In Ground 1 of his third amended habeas corpus petition, Connors claims:

4             The jury instructions for premeditation, willfulness and deliberation violated due  
5             process. Accordingly Mr. Connors is imprisoned in violation of his right to due  
6             process under the Fifth [and] Fourteenth Amendments of the United States  
7             Constitution.

8             Third Amended Petition (ECF No. 58), p. 6. Connors argues that the statutory definition of first  
9             degree murder in Nevada “requires proof of three separate elements: the prosecution must prove that  
10            the killing was (1) willful, (2) deliberate, and (3) premeditated,” and that a jury instruction given at  
11            his trial “essentially eliminated two of these elements.” *Id.* at 6-7; *see also* NRS 200.030(1)(a).  
12            The instruction at issue told the jury that if they found that the killing was “premeditated,” then the  
13            act constituted a “willful, deliberate and premeditated murder.” *See* Third Amended Petition, p. 7;  
14            *see also* Exhibit 117, Instruction 9. According to Connors, that instruction was endorsed in *Kazalyn*  
15            *v. State*, 108 Nev. 67, 825 P.2d 578 (1992), and was used in Nevada between 1992 and 2000. *See*  
16            Third Amended Petition, p. 7. Connors argues: “The *Kazalyn* instruction violates the due process  
17            guarantee of the Federal Constitution by relieving the State of the burden of proving every statutory  
18            element of first degree murder beyond a reasonable doubt.” *Id.* Connors points out that in 2000, in  
19            *Byford v. State*, 116 Nev. 215, 994 P.2d 700 (2000), the Nevada Supreme Court abrogated the  
20            *Kazalyn* instruction, and ordered that, in subsequent first degree murder cases, Nevada trial courts  
21            were to give instructions separately defining “willful,” “deliberate,” and “premeditated.”

22            Connors asserted this claim in his state habeas action, and the state courts denied it; the  
23            Nevada Supreme Court ruled that “the *Kazalyn* instruction was proper at the time Connors’s jury  
24            was given it.” Order of Affirmance, Exhibit 173, p. 5. The Nevada Supreme Court’s ruling was not  
25            objectively unreasonable.

26            In *Garner v. State*, 116 Nev. 770, 6 P.3d 1013 (2000), *overruled on other grounds by Sharma*  
27            *v. State*, 118 Nev. 648, 56 P.3d 868 (2002), and *Nika v. State*, 124 Nev. 1272, 198 P.3d 839 (2008),

1 the Nevada Supreme Court explained that in *Byford* the Nevada Supreme Court announced a change  
 2 in state law. *See Nika*, 124 Nev. at 1286 198 P.3d at 849 (“We take this opportunity to reiterate that  
 3 *Byford* announced a change in state law.”); *Garner*, 116 Nev. at 789, 6 P.3d at 1025.

4 In *Nika*, the Nevada Supreme Court stated clearly that “the Kazalyn instruction correctly  
 5 reflected Nevada law before *Byford*.” *Nika*, 124 Nev. at 1287, 198 P.3d at 850.

6 In *Babb v. Lozowsky*, 719 F.3d 1019 (9th Cir.2013) cert. denied sub nom. *Babb v. Gentry*,  
 7 134 S.Ct. 526 (2013), overruled on other grounds by *Moore v. Helling*, 763 F.3d 1011  
 8 (9th Cir.2014), the Ninth Circuit Court of Appeals discussed the Nevada Supreme Court’s holding  
 9 in *Nika*:

10 ... [T]he Nevada Supreme Court held in *Nika v. State*, 124 Nev. 1272, 198  
 11 P.3d 839, 849 (2008), that the *Byford* decision was not a clarification of the murder  
 12 statute -- that is, *Byford* had not righted prior decisions’ incorrect interpretations of  
 13 Nevada’s murder statute. Rather, the *Nika* court explained, *Byford* had announced a  
 14 new interpretation of the murder statute, which changed the law. *Id.* The *Nika* court  
 15 declared that any language in *Byford* and *Garner* suggesting that *Byford* was a  
 16 clarification rather than a new rule was dicta. *Id.* at 849-50. According to *Nika*, this  
 Court in [*Polk v. Sandoval*, 503 F.3d 903 (9th Cir.2007)] was wrong in concluding  
 that the *Kazalyn* instruction was a violation of due process because the instruction  
 accurately represented the elements of first degree murder up until *Byford* was  
 decided. Thus, before *Byford* was decided, the *Kazalyn* instruction did not  
 improperly relieve the State of the burden of proving all the elements of first degree  
 murder. *Id.* at 850.

17 *Babb*, 719 F.3d at 1027-28 (emphasis added). In *Babb*, then, the Court of Appeals held that, in light  
 18 of an intervening Nevada Supreme Court decision, its prior holding in *Polk*, regarding the  
 19 constitutionality of the *Kazalyn* instruction with respect to convictions that became final before  
 20 *Byford*, is no longer good law. See *id.* at 1027-28, 1030. And, the court of appeals stated that prior  
 21 to *Byford* the *Kazalyn* instruction “did not improperly relieve the State of the burden of proving all  
 22 the elements of first degree murder.” *Id.* at 1028.

23 Connors’ conviction became final in 1996, well before the Nevada Supreme Court decided  
 24 *Byford*, and changed Nevada law regarding the elements of first degree murder, in 2000. *See*  
 25 Exhibits 138, 147, 148, 149; *see also Griffith v. Kentucky*, 479 U.S. 314, 321 n.6 (1987) (conviction  
 26 final when “judgment of conviction has been rendered, the availability of appeal exhausted, and the

1 time for a petition for certiorari elapsed or a petition for certiorari finally denied"). Therefore, in  
 2 light of the holdings in *Garner*, *Nika*, and *Babb*, this court concludes that the *Kazalyn* instruction  
 3 given in Connors' trial was an accurate statement of Nevada law. The use of that instruction did not  
 4 violate Connors' federal constitutional right to due process of law.

5 This court, therefore, finds that the state courts' denial of the claim asserted by Connors as  
 6 Ground 1 of his third amended habeas petition was not contrary to, or an unreasonable application  
 7 of, clearly established federal law, as determined by the Supreme Court of the United States, and the  
 8 state courts' ruling was not based on an unreasonable determination of the facts in light of the  
 9 evidence presented. *See* 28 U.S.C. § 2254(d). Connors does not show habeas relief to be warranted.  
 10 The court will deny habeas corpus relief with respect to this claim.

11       Ground 2

12       In Ground 2 of his third amended petition, Connors claims that his rights under the Fifth,  
 13 Sixth and Fourteenth Amendments were violated because his appellate counsel "was ineffective for  
 14 failing to challenge the jury instructions for premeditation, willfulness and deliberation on direct  
 15 appeal." Third Amended Petition, p. 9.

16       In *Strickland v. Washington*, 466 U.S. 668 (1984), the Supreme Court propounded a two  
 17 prong test for analysis of claims of ineffective assistance of counsel: the petitioner must demonstrate  
 18 (1) that the defense attorney's representation "fell below an objective standard of reasonableness,"  
 19 and (2) that the attorney's deficient performance prejudiced the defendant such that "there is a  
 20 reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding  
 21 would have been different." *Strickland*, 466 U.S. at 688, 694. A court considering a claim of  
 22 ineffective assistance must apply a "strong presumption" that counsel's representation was within the  
 23 "wide range" of reasonable professional assistance. *Id.* at 689. The petitioner's burden is to show  
 24 "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the  
 25 defendant by the Sixth Amendment." *Id.* at 687. And, to establish prejudice under *Strickland*, it is  
 26 not enough for the habeas petitioner "to show that the errors had some conceivable effect on the

1 outcome of the proceeding.” *Id.* at 693. Rather, the errors must be “so serious as to deprive the  
 2 defendant of a fair trial, a trial whose result is reliable.” *Id.* at 687.

3       Where a state court has adjudicated a claim of ineffective assistance of counsel, under  
 4 *Strickland*, establishing that the decision was unreasonable under AEDPA is especially difficult.  
 5 *See Richter*, 562 U.S. at 104-05. In *Richter*, the Supreme Court instructed:

6       The standards created by *Strickland* and § 2254(d) are both highly deferential,  
 7 [Strickland, 466 U.S. at 689]; *Lindh v. Murphy*, 521 U.S. 320, 333, n. 7, 117 S.Ct.  
 8 2059, 138 L.Ed.2d 481 (1997), and when the two apply in tandem, review is “doubly”  
 9 so, [*Knowles v. Mirzayance*, 556 U.S. 111, 123 (2009)]. The *Strickland* standard is a  
 10 general one, so the range of reasonable applications is substantial. 556 U.S., at 123,  
 11 129 S.Ct. at 1420. Federal habeas courts must guard against the danger of equating  
 12 unreasonableness under *Strickland* with unreasonableness under  
 13 § 2254(d). When § 2254(d) applies, the question is not whether counsel’s actions  
 14 were reasonable. The question is whether there is any reasonable argument that  
 15 counsel satisfied *Strickland*’s deferential standard.

16       *Richter*, 562 U.S. at 105; *see also Cheney*, 614 F.3d at 994-95 (acknowledging double deference  
 17 required with respect to state court adjudications of *Strickland* claims).

18       Connors raised this claim of ineffective assistance of appellate counsel in his state habeas  
 19 action, and the Nevada Supreme Court ruled on it as follows:

20       ... [C]iting *Byford v. State*, Connors argues that counsel were ineffective for  
 21 failing to challenge allegedly improper jury instructions on premeditation and  
 22 deliberation. Connors’s jury was given the so-called *Kazalyn* instruction. In *Byford*,  
 23 we offered new instructions on these elements, but we did not conclude that the  
 24 *Kazalyn* instruction was erroneous or unconstitutional. We also granted no relief to  
 25 Byford on this issue. Connors fails to explain why we might have ruled differently in  
 26 his case had the argument been raised, and the *Kazalyn* instruction was proper at the  
 time Connors’s jury was given it. We therefore conclude that the district court did  
 not err in denying this claim.

27 Order of Affirmance, Exhibit 173, pp. 4-5.

28       As is discussed above with regard to Ground 1, in light of the holdings in *Garner*, *Nika*, and  
 29 *Babb*, the court concludes that the *Kazalyn* instruction given in Connors’ trial was an accurate  
 30 statement of Nevada law. The use of that instruction in Connors’ trial did not constitute reversible  
 31 error. Therefore, Connors cannot show that his appellate counsel’s performance fell below an  
 32 objective standard of reasonableness on account of his failure to challenge the *Kazalyn* instruction on

1 Connors' direct appeal. Moreover, given the ruling of the Nevada Supreme Court regarding this  
2 issue on the appeal in Connors' state habeas action, it is plain that his appellate attorney's failure to  
3 raise the issue on his direct appeal prejudiced him; there is not a reasonable probability that the result  
4 of the appeal would have been different had counsel raised the issue. The state courts' denial of  
5 relief on this claim was not objectively unreasonable.

6 The state courts' denial of the claim of ineffective assistance of appellate counsel, asserted by  
7 Connors as Ground 2 of his third amended habeas petition, was not contrary to, or an unreasonable  
8 application of, clearly established federal law, as determined by the Supreme Court of the United  
9 States, and the state courts' ruling was not based on an unreasonable determination of the facts in  
10 light of the evidence presented. *See* 28 U.S.C. § 2254(d). Connors does not show habeas relief to be  
11 warranted. The court will deny habeas corpus relief with respect to this claim.

12 Ground 3

13 In Ground 3 of his third amended petition, Connors claims that his rights under the Fifth,  
14 Sixth and Fourteenth Amendments were violated because his trial counsel "was ineffective for  
15 failing to challenge the jury instructions for premeditation, willfulness and deliberation...." Third  
16 Amended Petition, p. 9.

17 Connors raised this claim of ineffective assistance of his trial counsel in his state habeas  
18 action, and the state courts denied the claim. *See* Order of Affirmance, Exhibit 173, pp. 4-5. The  
19 state courts' ruling was not objectively unreasonable.

20 The state-court record reflects that Connors' trial counsel did, in fact, object to the *Kazalyn*  
21 instruction, and he proposed a jury instruction separately defining "premeditation" and  
22 "deliberation." *See* Reporter's Transcript, March 4, 1994, Exhibit 117, pp. 3-5; Defendant's  
23 Proposed Jury Instructions, Respondents' Exhibit 1 in Support of Answer (ECF No. 64). Therefore,  
24 this claim is belied by the record. Trial counsel did object to the *Kazalyn* instruction, and offered an  
25 alternative jury instruction.

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1       Moreover, as is discussed above, the *Kazalyn* instruction accurately reflected Nevada law at  
 2 the time of Connors' trial, so Connors was not prejudiced by any alleged shortcoming of his trial  
 3 counsel in objecting to that instruction. Trial counsel's objection was properly overruled.

4       The state courts' denial of the claim of ineffective assistance of trial counsel, asserted by  
 5 Connors as Ground 3 of his third amended habeas petition, was not contrary to, or an unreasonable  
 6 application of, clearly established federal law, as determined by the Supreme Court of the United  
 7 States, and the state courts' ruling was not based on an unreasonable determination of the facts in  
 8 light of the evidence presented. *See* 28 U.S.C. § 2254(d). Connors does not show habeas relief to be  
 9 warranted. The court will deny habeas corpus relief with respect to this claim.

10 Certificate of Appealability

11       The standard for issuance of a certificate of appealability calls for a "substantial showing  
 12 of the denial of a constitutional right." 28 U.S.C. §2253(c). The Supreme Court interpreted  
 13 28 U.S.C. §2253(c) as follows:

14       Where a district court has rejected the constitutional claims on the merits, the  
 15 showing required to satisfy § 2253(c) is straightforward: The petitioner must  
 16 demonstrate that reasonable jurists would find the district court's assessment of the  
 17 constitutional claims debatable or wrong.

18       *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also James v. Giles*, 221 F.3d 1074, 1077-79  
 19 (9th Cir. 2000). The Supreme Court further illuminated the standard in *Miller-El v. Cockrell*,  
 20 537 U.S. 322 (2003). The Court stated in that case:

21       We do not require petitioner to prove, before the issuance of a COA, that some jurists  
 22 would grant the petition for habeas corpus. Indeed, a claim can be debatable even  
 23 though every jurist of reason might agree, after the COA has been granted and the  
 24 case has received full consideration, that petitioner will not prevail. As we stated in  
 25 *Slack*, "[w]here a district court has rejected the constitutional claims on the merits, the  
 26 showing required to satisfy § 2253(c) is straightforward: The petitioner must  
 demonstrate that reasonable jurists would find the district court's assessment of the  
 constitutional claims debatable or wrong."

27       *Miller-El*, 123 S.Ct. at 1040 (quoting *Slack*, 529 U.S. at 484).

1       The court has considered Connors' claims in Grounds 1, 2 and 3 of his third amended habeas  
2 petition, with respect to whether they satisfy the standard for issuance of a certificate of appeal -- and  
3 the court is cognizant of the court of appeals' grant of a certificate of appealability with regard to  
4 Ground 1 of Connor's second amended habeas petition -- and the court will grant Connors a  
5 certificate of appealability with respect to Grounds 1, 2 and 3 of his third amended petition.

6       **IT IS THEREFORE ORDERED** that the Clerk of the Court shall update the docket in this  
7 case to substitute Brian E. Williams, Sr., for E. K. McDaniel as the respondent warden.

8       **IT IS FURTHER ORDERED** that petitioner Christopher W. Connors' Third Amended  
9 Petition for Writ of Habeas Corpus (ECF No. 58) is **DENIED**.

10      **IT IS FURTHER ORDERED** that petitioner is granted a certificate of appealability with  
11 respect to Grounds 1, 2 and 3 of his third amended petition for writ of habeas corpus.

12      **IT IS FURTHER ORDERED** that the clerk of the court shall enter an amended judgment  
13 reflecting that: all claims in petitioner's second amended petition for writ of habeas corpus are  
14 denied; all claims in petitioner's third amended petition for writ of habeas corpus are denied; and  
15 petitioner is granted a certificate of appealability with respect to Grounds 1, 2 and 3 of his third  
16 amended petition for writ of habeas corpus.

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18      Dated April 28, 2015.

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\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

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